

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 15-32450 (KLP)

Jointly Administered

BLACK DIAMOND COMMERCIAL FINANCE, LLC,

Plaintiff,

-against-

VIRGINIA CONSERVATION LEGACY FUND, INC.
and ERP COMPLIANT FUELS, LLC,

Defendants.

Adv. Proc. No. 16-03105
(KLP)

VIRGINIA CONSERVATION LEGACY FUND, INC.
and ERP COMPLIANT FUELS, LLC,

Counterclaim-Plaintiffs,

-against-

BLACK DIAMOND COMMERCIAL FINANCE, LLC,

Counterclaim-Defendant.

FINAL PRETRIAL CONFERENCE ORDER

This matter is before the Court on the final pretrial conference. **IT IS HEREBY ORDERED** that this matter is set for a **five-day trial** beginning on **June 4, 2018**.

IT IS FURTHER ORDERED that the following schedule is established in this adversary proceeding. Failure to comply with this Order may result in sanctions, as appropriate.

1. The trial shall be held in the United States Bankruptcy Court, **Room 5100**, United States Bankruptcy Courthouse, 701 East Broad Street, Richmond, Virginia and commence on **June 4, 2018** (the “Trial Date”) at **10:00 a.m.**

2. On or before **May 14, 2018**, 21 days prior to the Trial Date, counsel for the parties shall meet and confer, either at a mutually convenient location or telephonically, and make a good-faith effort to narrow the issues in the trial and to enter into written stipulations of any uncontested facts (the “Stipulation”). The Stipulation (or in lieu thereof, a joint statement of counsel that no agreement as to any uncontested facts could be reached) shall be filed with the Court on or before **May 22, 2018**, 13 days prior to the Trial Date.

3. On or before **May 22, 2018**, 13 days prior to the Trial Date, counsel for the parties shall each file with the Clerk and serve on one another proposed exhibits that they may use at trial and a list of such exhibits. The proposed exhibits shall be filed and served in accordance with the attached instructions, which are hereby incorporated and made a part of this Order. The parties need not file proposed exhibits to be used on cross-examination, nor shall the parties be required to place such exhibits on their proposed exhibit lists.

4. Objections to any of the proposed exhibits, as well as stipulations by the parties as to the admissibility of proposed exhibits, shall be filed on or before **May 29, 2018**, 6 days prior to the Trial Date.

5. On or before **May 22, 2018**, 13 days prior to the Trial Date, the parties shall each file a list of witnesses that they intend to call to testify at trial in accordance with Rule 26(a)(3)(A) of the Federal Rules of Civil Procedure, as made applicable to this proceeding by the Federal Rules of Bankruptcy Procedure. The parties may file a list of rebuttal witnesses on or before **May 29, 2018**, 6 days prior to the Trial Date.

6. On or before **May 22, 2018**, 13 days prior to the Trial Date, counsel for the parties shall file a designation of those witnesses whose testimony is expected to be presented

by means of video-recorded deposition, and an excerpted transcript of the pertinent parts of any deposition testimony. The excerpted transcript may take the form of a computer-generated clip report. Not later than **May 25, 2018**, 10 days prior to the Trial Date, any other party may file counter-designations of the excerpted transcript to the extent that other parts of the transcript should, in fairness, be considered with the parts expected to be introduced. Objections to the use under Rule 32(a) of the Federal Rules of Civil Procedure, as made applicable to this proceeding by the Federal Rules of Bankruptcy Procedure, of a deposition so designated by another party shall be filed on or before **May 29, 2018**, 6 days prior to the Trial Date. For the avoidance of doubt, the limitations and requirements set forth in this paragraph shall not apply to deposition testimony a party intends to use at trial solely for impeachment.

7. Starting on **June 2, 2018**, and continuing through trial, the parties shall exchange witness names, in the order of presentation, to be presented at trial (either live or by deposition) on the day after the next trial day (*i.e.*, two days in advance). This exchange shall take place daily at 7:00 p.m. prevailing Eastern Time. By way of example, the witnesses that a party intends to call and/or the depositions that a party intends to play by video into evidence on Wednesday, June 6, 2018, must be identified by 7:00 p.m. prevailing Eastern Time on Monday, June 4, 2018.

8. Witnesses will be sequestered during the trial until the conclusion of their testimony. To the extent that all parties intend to call a given witness in their respective cases-in-chief, the witness shall be examined first by the party under whose control or employ the witness is, and thereafter be subjected to cross and direct examination by the opposing party.

9. The parties stipulate that all documents, with the exception of hand-written notes, produced in discovery by the parties or non-parties in the above-named action are

deemed authenticated for purposes of this litigation pursuant to Federal Rule of Evidence 901. The parties reserve all other objections, including objections under other Rules.

10. Upon two days' prior, written notice, the parties agree to make available to testify at trial any witness identified on either party's witness list who is in the party's employ or under its control without requiring the opposing party to serve a trial subpoena on that witness.

11. The deadlines set forth in this order shall supersede any equivalent deadlines set forth in the Federal Rules of Civil Procedure, as made applicable to this proceeding by the Federal Rules of Bankruptcy Procedure (collectively, the "Federal Rules"), or the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the "Local Rules"). No party shall argue that a pretrial submission or filing is untimely based on a party's failure to comply with a contrary pretrial deadline set forth in the Federal or Local Rules.

12. It is the responsibility of all counsel to be thoroughly acquainted with and follow the procedures set forth in the statutes, the national and local bankruptcy rules, and the requirements of the Judge.

13. The Clerk shall forward a copy of this order to all counsel of record.

14. The parties reserve all rights, including (but not limited to) the right to seek relief from the Court for good cause, notwithstanding the dates set forth in this order.
May 7 2018

SO ORDERED, this __ day of May, 2018.

/s/ Keith L. Phillips

THE HONORABLE KEITH L. PHILLIPS
UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: May 8 2018

WE ASK FOR THIS:

/s/ Patrick J. Potter

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*Counsel to Black Diamond Commercial
Finance, LLC*

Local Rule 9022-1 Certification

I hereby certify that the foregoing proposed order has been endorsed by all necessary parties or has been served upon all necessary parties.

/s/ John H. Maddock III

John H. Maddock III

Certificate of Service

I hereby certify that on May 4, 2018, I caused the foregoing document to be filed with and uploaded to this Court's CM/ECF system, which will send notification of such filing to all CM/ECF participants, and served on the following parties via email:

William M. Sullivan, Jr. (wsullivan@pillsburylaw.com)
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/s/ John H. Maddock III

John H. Maddock III

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

**INSTRUCTIONS
FOR PREPARING EXHIBIT LIST AND PREMARKING EXHIBITS**

Exhibit List

The Exhibit List must be typewritten, double-spaced, and should briefly describe each Exhibit to be introduced at trial. The "identified" and "admitted" columns should be left blank

Exhibits

Each Exhibit should be numbered on a colored adhesive label, in accordance with the following:

PLAINTIFF*	YELLOW - numerically, beginning No. 1
DEFENDANT*	BLUE - alphabetically, <i>e.g.</i> , A, B, C, . . . AA, AB, etc.
GOVERNMENT	YELLOW - numerically, beginning No. 101

*In cases with more than one party, please identify the appropriate party on each Exhibit.

The adhesive labels should be affixed at the bottom of the Exhibit. Exhibits must be numbered to correspond with the numbers assigned on the Exhibit List to such Exhibit.

Exhibits should be letter size (8 1/2" by 11"), photo-reduced, if necessary, pursuant to Local Rule 5005-1(C)(3).

If an Exhibit is a small document, such Exhibit must be stapled to a sheet of standard sized paper, and the Exhibit label affixed to the bottom of the sheet of paper. In the case of a group of photographs or checks, please affix a separate label to each photograph or check, and number as follows:

PLAINTIFF	1-A, 1-B, 1-C, etc.
DEFENDANT	A-1, A-2, A-3, etc.
GOVERNMENT	101-A, 101-B, 101-C, etc.

The marked Exhibits must be firmly bound and tabbed. The originals and two copies of both the Exhibits and Exhibit List should be filed with the Court by the date set in the Pretrial Order. Sufficient copies should be available for each opposing counsel.

It is desirable that counsel stipulate as to the admissibility of as many Exhibits as possible, so that such Exhibits may be admitted into evidence at the beginning of trial.

[Note: Please refer to Local Rule 9070-1 for procedural information on exhibits.]

